

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IB-617(ND)/2023**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. RAGHUBIR SARAN AND SONS

Having its registered office at:

2183, Tilak Bazar, Khari Baoli, Delhi-110006.

Through its Proprietor

Mr. Gian Chand Sharma

..... Operational Creditor

VERSUS

M/s. SHELLZ INDIA PRIVATE LIMITED

Having its registered office at:

99, Main Chowk, Samaipur, Delhi-110042.

CIN: U15490DL2012PTC235397

..... Corporate Debtor

Order Delivered On: 07.02.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Ram Mandil, Adv.

For the Respondent : Mr. Namit Suri, Ms. Surabhi Sinha, Advs. along with
Mr. Ravi, CS

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application under Section 9 of IBC, 2016 has been filed by M/s. Raghubir Saran and Sons, which is a proprietorship seeking initiation of

Corporate Insolvency Resolution Process (CIRP) against M/s. Shellz India Private Limited, the Corporate Debtor herein.

2. The case of the Applicant/ Operational Creditor, as stated in Part 4 of this Application, is that the Operational Creditor is a leading supplier of high-quality products such as food chemicals and food ingredients and deals in products like Malto Dextrine Powder, Dextrose Monohydrate, Starch, Liquid Glucose, Sweet Whey Powder, Whey Powder, Lactose Monohydrate. The Operational Creditor is the authorised selling partner of Roquette India, Amul and Sukhjit Starch. The Operational Creditor has been in business since the year 1977. The Operational Creditor supplied various products/goods to the Corporate Debtor such as Glucose, Dextrose, Starch, etc. from 20.11.2020 onwards.
3. It is the case of the Operational Creditor that the Operational Creditor is only a supplier of the goods and not a manufacturer of the same. The Operational Creditor purchases the said goods from reputed companies such as Amul, Roquette, etc. which have been duly certified by the said companies and a Certificate of Analysis (COA) is issued by the companies certifying the quality of the goods.
4. Between 20.11.2020 to 06.09.2021, the Operational Creditor raised various invoices to the Corporate Debtor. As per the invoices, the Corporate Debtor is liable to make an advance payment at the time of picking up the material from this side. The Corporate Debtor defaulted in making the payments. The Corporate Debtor issued 12 cheques on various dates ranging between 29.04.2021 to 27.05.2021 amounting to Rs. 54,09,582/-. However, the said cheques were dishonored upon presentation. Consequent to which the Operational Creditor filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 which is pending adjudication. Thereafter, the Corporate Debtor made part payment amounting to Rs. 21,87,349/- in tranches.
5. Since the Corporate Debtor did not make the payment, the Operational Creditor issued a statutory demand notice under Section 8 of the Code through its lawyer which was duly served upon the Corporate Debtor

through E-mail and speed post. However, no reply was received from the Corporate Debtor to the Section 8 demand notice.

6. Therefore, the Operational Creditor filed the present application under Section 9 of the Code on the ground of the default by the Corporate Debtor for an amount of Rs. 1,64,24,618/- including interest at the rate of 18% per annum as on 30.06.2023.
7. The Corporate Debtor in its reply affidavit has denied the allegations and contentions raised by the Operational Creditor. The Corporate Debtor has raised a preliminary objection with respect to the present application under Section 9 which has been filed by the proprietorship concern is not maintainable.
8. The Corporate Debtor has also submitted that there is a pre-existing dispute between the parties in as much as a commercial suit bearing **CS (COMM) No. 4810 of 2021** titled as **M/s. Raghubir Saran and Sons vs. M/s. Shellz India Pvt. Ltd.** which was filed wherein the quality of the goods supplied by the Operational Creditor to the Corporate Debtor was in question and the amount of Rs. 1,18,20,296/- along with interest @18% per annum was sought to be recovered from the Corporate Debtor. The Corporate Debtor filed its written statement pursuant to the summons received from the Ld. Trial Court vide order dated 17.11.2021 and the matter is pending for arguments.
9. It is also contended by the Corporate Debtor that a reply to the Section 8 demand notice was given vide email dated 27.07.2023 to the counsel for the Operational Creditor on email Id:mohitchaudhary2020@gmail.com as well as through speed post dated 28.07.2023. It is also submitted that the Corporate Debtor vide email dated 30.09.2021 raised a specific dispute with regard to the inferior quality of products being Dextrose Monohydrate and Whey Powder supplied by the Operational Creditor to the Corporate Debtor which was rejected by the Corporate Debtor.
10. The Corporate Debtor has further alleged that the Operational Creditor had filed an affidavit in terms of Section 9(3)(b) of the Code stating therein that no dispute was raised by the Corporate Debtor relating to the unpaid Operational Debt.

11. We have heard the submissions of Ld. Counsel on behalf of the Operational Creditor and Ld. Counsel appearing on behalf of the Corporate Debtor and perused the records.
12. Since the Corporate Debtor has raised an issue of pre-existing dispute, it would be pertinent to refer to the specific objections raised thereto.
13. The Corporate Debtor has firstly submitted that the Operational Creditor had filed a commercial suit bearing **CS (COMM) No. 4810 of 2021** titled as **M/s. Raghubir Saran and Sons vs. M/s. Shellz India Pvt. Ltd.** for alleged recovery of Rs. 1,18,20,296/- along with interest @18% per annum for supply of inferior quality of goods. The said fact has not been contended by the Operational Creditor. Further, the Corporate Debtor in its reply to the Section 8 demand notice sent vide email dated 27.07.2023 specifically stated the pendency of the said suit. The relevant extract of the said reply dated 27.07.2023 mentioning pre-existing dispute is reproduced below:

“24. That your client has also filed a commercial suit bearing CS (Comm) No. 4810 of 2021 against our client and its directors seeking recovery of Rs. 1,18,20,296/- with interest and costs on the false and frivolous grounds before the Hon'ble Court of District Judge (Commercial Court 06), Central District, Tis Hazari Courts, Delhi. The said suit is still pending for adjudication before the Hon'ble Court and is now fixed for 29.08.2023. In response to the said suit. our client has already filed its written statement.

25. That it is submitted that the said suit has been filed by your client out of ill-will and with dishonest and malafide intentions in order to escape from honoring the legitimate claim of our client qua credit note of Rs. 56,31,444/- (approximately) and to gain wrongfully at the cost of our client.

26. That your client with malafide intentions and despite knowing the fact about the pendency of the pre-existed disputes pending before the various courts got the notice under reply issued which is against the provisions of the Insolvency and Bankruptcy Code, 2016.”

14. Further, the Corporate Debtor has drawn our attention to the email dated 30.09.2021 wherein certain disputes were raised. The relevant extract of the said email dated 30.09.2021 is reproduced below:

“Shellz India Private Limited - M/s. Raghbir Saran & Sons - Market Claims/ Issuance of Credit Notes

Sumit Kumar <Sumit.Kumar@shellzoverseas.com>

Thu 9/30/2021 16:28

To:raghubirsaran10@gmail.com <raghubirsaran10@gmail.com>

Without Prejudice

Dear Gaurav Ji,

We are before you this time formally intimating you about the inferior quality of the material, inter alia, Dextrose Monohydrate and Whey Powder supplied by you to Shellz India Private Limited through our various orders placed upon you within a span of last 5-6 months amounting Rs. 40-45 lac.

However, in complete contradiction of what all you represented and assured us, we have over a period of time consistently received several market claims for an amount over and above Rs. 80 90 lac, which we are still receiving in bits and pieces and assessing to settle. The above fact has been brought to your kind knowledge time and again and also conveyed you that we have a reputation in the market to maintain which was being prejudiced by reason of your inferior material supplied to us. Being threatened and to avoid any litigation, we were initially constraint to stop the payment of said cheques given for security purpose towards the material supplied by you over a period of time. However, we are still not refusing to clear the cheques amount provided you shall first proceed to issue us the first credit note of Rs. 85 lac, as we are still assessing our claims.”

15. Thus it is clear that the commercial suit was filed on 16.11.2021 and thereafter and even prior to that the Corporate Debtor send email dated 30.09.2021 raising specific disputes with respect to the quality of goods etc. This makes it clear that the pre-existing dispute was raised by the Corporate Debtor much before the issuance of the demand notice under

Section 8 of the Code. We therefore do not find any merit in the present application filed under Section 9 of IBC, 2016 which ought to be dismissed.

16. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

- i.** The Application bearing **IB-617(ND)/2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**